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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES

11 CHURCH OF SCIENTOLOGY OF)
12 CALIFORNIA,)

13 Plaintiff,)

14 vs.)

15 GERALD ARMSTRONG,)

16 Defendant.)

CASE NO. C 420 153

NOTICE OF MOTION AND MOTION
FOR AN ORDER DIRECTING
PLAINTIFFS/INTERVENOR TO FILE
AN EXECUTED DUPLICATE ORIGINAL
OF THE MUTUAL RELEASE AND
SETTLEMENT AGREEMENT

Date: February 6, 1989

Time: 9:00 a.m.

Dept: 56

(FILED UNDER SEAL)

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19
20 TO ALL PARTIES AND COUNSEL OF RECORD:

21
22 PLEASE TAKE NOTICE THAT on February 6, 1989, at 9:00 a.m. in
23 Department 56 of the above-entitled Court at 111 No. Hill Street,
24 Los Angeles, California, BENT CORYDON will move the Court for an
25 order that Plaintiff/Intervenor file a duplicate executed original
26 of the Mutual Release and Settlement Agreement in the within case.

27 / / /

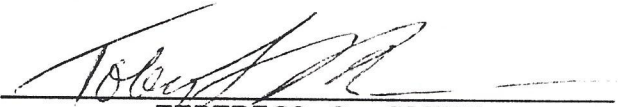
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Said motion will be based upon this notice, the points and authorities, exhibits and declarations submitted herewith, and the complete file of this matter.

DATED: January 11, 1989

SAYRE, MORENO, PURCELL & BOUCHER



FEDERICO C. SAYRE
TOBY L. PLEVIN
Attorneys for BENT CORYDON

1 purpose of enforcing said Agreement."

2 (Emphasis added.)

3
4 A copy of that Stipulation is attached hereto as Exhibit A.

5
6 During the oral proceedings related to the settlement,
7 although the Court questioned counsel about the several
8 stipulations presented, including the Stipulation for Return of
9 Sealed Materials, there was no reference to the terms of the
10 Mutual Release of All Claims and Settlement Agreement (the
11 Settlement). See Exhibit B, Transcript of Proceedings,
12 December 11, 1986. The Order Dismissing Action with Prejudice
13 states that the Settlement was to be maintained under seal by the
14 Court. See Exhibit C. The Minute Order of the same date lists
15 the various stipulations and orders filed on December 11, 1986.
16 The Mutual Release of All Claims and Settlement Agreement was not
17 listed. See Exhibit D, Minute Order of December 11, 1986.

18
19 On December 12, the Court entered an order, attached hereto
20 as Exhibit E, observing that

21 "The Court finds that the document entitled
22 'Mutual Release of All Claims and Settlement
23 Agreement' referred to in the Joint
24 Stipulation of Dismissal as and [sic] executed
25 copy and referred to in the Order Dismissing
26 Action as an executed duplicate original, has
27 not been filed with the court.'" (Emphasis
28 added.)

1 [This raises the question of whether, when he signed the
2 Order Dismissing Action with Prejudice, Judge Breckenridge
3 actually reviewed that document or, rather, relied on counsel's
4 representations, as a matter of routine, that there was an
5 agreement. The reason for questioning whether Judge Breckenridge
6 actually reviewed that agreement will become apparent, infra.]
7

8 On December 17, 1986, the court prepared a minute order
9 noting a second conversation with counsel regarding the fact that
10 the "Mutual Release of All Claims and Settlement Agreement" had
11 still not been filed but that, "in view of the oral agreement of
12 counsel, the 'Order for Return of Exhibits and Sealed Documents'
13 is to be complied with". See Exhibit "F", Minute Order of
14 December 17, 1986. A review of the Register of Actions in this
15 case shows no filing of any Mutual Release and Settlement
16 Agreement on any date subsequent to December 11, 1986. See
17 Certified Copy of Register of Actions attached hereto as
18 Exhibit "G".
19

20 On or about December 23, 1988, a Response to Petition for
21 Writ of Supersedeas was filed with the Court of Appeal in support
22 of this Court's orders of November 9 and 30, 1988 in this matter.
23 Included among the exhibits thereto was (1) a redacted copy of a
24 "Mutual Release Agreement", with an appendix, between the CHURCH
25 OF SCIENTOLOGY and a person whose name was deleted; which was
26 executed on December 5, 1986, on behalf of the Church; (2) a
27 document captioned "Settlement Agreement" which identifies
28 settlement amounts for a number of individuals in litigation

1 against the CHURCH OF SCIENTOLOGY, including Gerald Armstrong and
2 an individual named William Franks. It includes Mr. Armstrong as
3 one of twelve clients participating in a collective settlement
4 with the Church concluded on December 11, 1986. It contains Mr.
5 Armstrong's signature and shows a settlement in the amount of
6 \$800,000 for Mr. Armstrong and \$40,000 for Mr. Frank (whereas the
7 Mutual Release Agreement mentions no money consideration but
8 merely purports to effect settlement for silence and a mutual
9 release of claims). All those documents are attached hereto as
10 Exhibit "H".

11
12 On or about December 31, 1988, Mr. Armstrong's attorney, Mr.
13 Michael Flynn, filed a document with the Court of Appeal
14 denominated a Response of Gerald Armstrong. Although hedging as
15 to whether the items comprising Exhibit "H" are what they purport
16 to be, he nevertheless asked the Court that they be "immediately
17 sealed as they are confidential settlement documents not intended
18 to be made public". See Exhibit "I", Response of Gerald Armstrong
19 to Opposition Filed by Real Party Interest. Attached as an
20 Exhibit thereto is a declaration of William Franks which appears
21 to be an admission that those documents were his Mutual Release
22 with the Church and his Settlement Agreement with Mr. Flynn.
23 While these statements are tantamount to an admission that the
24 Mutual Release and the Settlement Agreement are precisely what
25 they purport to be, (that is, the release signed by each of Mr.
26 Flynn's clients including Mr. Armstrong, pursuant to the
27 collective settlement with the Church as reflected in the
28 Settlement Agreement), Mr. Flynn also acknowledged that, contrary

1 to Judge Breckenridge's order, they were never filed with the
2 Court.

3
4 On January 4, 1989, the Court of Appeal denied Mr. Flynn's
5 request that the documents be sealed since they were "not part of
6 the case file in the underlying action." The Court further
7 stated, "The request is denied for failure to demonstrate
8 entitlement." See Order, attached hereto as Exhibit "J".

9
10 Pursuant to the Declaration of Toby L. Plevin, attached
11 hereto, counsel has diligently searched the court files containing
12 documents from all of the 1986 to the present. No Mutual Release
13 of All Claims and Settlement Agreement was found.

14
15 Based on the foregoing, it cannot be reasonably disputed that
16 the Mutual Release of All Claims and Settlement Agreement was not
17 filed as stipulated and ordered. Indeed, given the content of the
18 Mutual Release Agreement as set forth in section II, infra, and in
19 light of the misrepresentations to the court that it had been
20 filed prior to the December 11, 1986 hearing regarding the
21 Settlement, that failure must be deemed a deliberate effort to
22 prevent the court from knowing the unconscionable, unenforceable
23 terms it contains.

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II

BECAUSE THE MUTUAL RELEASE AGREEMENT CONTAINS
TERMS THAT ARE VIOLATIVE OF PUBLIC POLICY AND
OBSTRUCT JUSTICE, THE MUTUAL RELEASE MUST BE
ORDERED FILED BUT NOT SEALED SO THAT REMEDIAL
ACTION CAN BE TAKEN.

A. The Settlement Agreement Contains Terms
Which Violate Public Policy And Are An
Obstruction Of Justice.

The thrust of the Mutual Release is that the party adverse to the CHURCH OF SCIENTOLOGY agrees, under penalty of a \$50,000 liquidated damages claim, to refuse to talk to anyone about anything about SCIENTOLOGY unless compelled to by lawful subpoena but also requires that the party evade service of process of any such subpoena. See paragraphs 6G, 6H and 8 of the Mutual Release. It is self evident that such purchased silence has obstructed all other litigants adverse to SCIENTOLOGY, including Mr. Corydon. No doubt this impact will continue until the numerous people who feel burdened by that part of the agreement are released from that burden. (See Declaration of Bent Corydon attached hereto.)

In sum, the agreement is a violation of public policy and must be brought to light to be countered because of its continuing impact as an obstruction of justice. California case law requires this result.

/ / /

1 On point is Mary R. v. B & R Corporation (1983) 196 Cal.Rptr.
2 781, 149 Cal.App.3d 308, where a physician, accused of molesting a
3 minor, settled with a stipulation that the minor would not discuss
4 the events giving rise to the lawsuit. This settlement became an
5 order of the court, and when the Attorney General's office moved
6 to set it aside, the motion was denied. On appeal, the agreement
7 was held to be against public policy, wrongfully placing a party
8 under fear, and thereby prohibiting the Board of Medical Quality
9 Assurance (BMQA) from discovering facts. Mary R. approved Bianco
10 v. Superior Court, 265 Cal.App.2d 126 statement that "[a] law
11 established for public reason cannot be waived or circumvented by
12 a private act or agreement." The court in Mary R. further stated
13 the agreement was a "ploy obviously designed by the physician to
14 aid him to avoid the professional regulation. . . ." and an
15 "agreement to conceal judicial proceedings and obstruct justice."
16

17 While in Mary R. the BMQA had a statutory obligation to
18 regulate the practice of medicine and must investigate misconduct,
19 in civil lawsuits, brought under the color of law, a litigant has
20 the right to "investigate" charges made against him and to
21 discover facts in his favor by interviewing witnesses. For an
22 adverse litigant to pay a witness not to cooperate is clearly an
23 obstruction of justice.
24

25 In Tappan v. Albany Brewing Company, 80 Cal. 570, the court
26 invalidated a settlement agreement, stating:

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1 "It was contended by the Respondent that this
2 was nothing more than a payment of a sum of
3 money by way of a compromise of litigation,
4 and that such contracts have been upheld. We
5 do not so construe the agreement. It was a
6 promise to pay a consideration for the
7 concealment of a fact from the court and the
8 parties material to the rights of said
9 parties, and which it was her duty to make
10 known. Such a contract was against public
11 policy. . . ". (Emphasis added.)

12
13 In Maryland C. Co. v. Fidelity & Cas. Co. of N.Y., 71
14 Cal.App. 492, the court noted the duty to refuse to enforce an
15 illegal contract or one against public policy. The court approved
16 language of Eggleston v. Pantages, 103 Wash. 458:

17 "After the papers had been served a contract
18 was made between the parties whereby, in
19 consideration to make a promise to pay a
20 certain sum of money the Plaintiff agreed to
21 withhold the complaint from the files and give
22 no information to anyone concerning the same
23 for the commencement of the suit, thereby
24 preventing those interested from knowing the
25 true state of facts. Here was a clear attempt
26 to conceal judicial proceedings and to
27 obstruct justice for the purpose of wronging

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1 others interested. Agreements of this
2 character are clearly against public policy."

3
4 In addition to preventing access to important information via
5 buying the silence of witnesses, not only does the Church seek to
6 keep this file sealed because of the purported privacy interests,
7 but they have made it a practice to refuse to settle cases unless
8 agreements are entered into sealing Court files. See Reporter's
9 Transcript of Proceedings, December 11, 1986, attached hereto as
10 Exhibit "B", p. 6, lines 25-28 where counsel for the Church
11 stated:

12
13 "That is the procedure that the Church has
14 insisted on and all courts have agreed to in
15 various other Scientology cases involving
16 Mr.Flynn and others which have settled:"

17
18 Accordingly, the purported privacy interest in this Court
19 file is laid bare as a pretext, and furthermore, other adverse
20 parties, such as Mr. Corydon herein have had to suffer needless
21 litigation regarding issues which have already been litigated.
22 For example, collateral estoppel bars Plaintiffs from denying that
23 (1) Scientology has pursued an active fair game policy against its
24 enemies, or (2) that it routinely violates the priest-penitent
25 confidentiality of records of "troublemakers". (See Memorandum of
26 Intended Decision, attached hereto as Exhibit "J", at p.7, line 26
27 through p.8, lines 25.)

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1 In fact, such agreements are not merely a violation of public
2 policy, they may be considered criminal violations in light of
3 Penal Code § 138. Penal Code § 138 makes it a felony to offer any
4 form of bribe with understanding that person shall not attend a
5 trial or other judicial proceedings. Since the persons with whom
6 these agreements were made are prospective witnesses who are
7 prohibited from being "amenable to subpoena", they violate § 138.
8 Furthermore, when individuals are beyond subpoena power, a
9 contract to not cooperate with an adverse litigant must be
10 considered a violation of that provision as well.

11
12 Alternatively, to the extent that a party to these agreements
13 is only a potential witness to whom the statute may not apply per
14 se, nevertheless, the statute establishes beyond a doubt that such
15 potential interference with witnesses is an obstruction of justice
16 in violation of public policy.

17
18 B. The Fact That The Contracts To Keep Quiet
19 Were Part Of Settlement Agreements Is Not
20 Material.
21

22 The Church is certain to complain, in opposition, both that
23 filing the Agreement and/or filing it without a sealing order
24 would be tantamount to voiding contractual provisions which were
25 part of the consideration for which they settled. This argument
26 is invalid for three reasons: (1) two parties cannot create a
27 contract which will deny protection of the law to a third party;
28 (2) the courts cannot enforce a provision against public policy

1 simply because failure to enforce it would leave one or more of
2 the parties' unjustly enriched, (3) the court cannot be bound by
3 the parties contract, especially an illegal contract.
4 Furthermore, since it was falsely represented to the Court that
5 the Mutual Release of All Claims and Settlement Agreement had been
6 filed with the Court, they cannot now be heard to complain that to
7 do so would endanger anyone's interests.

8
9 Clearly, it is an obstruction of justice to pay off witnesses
10 not to cooperate voluntarily with adverse parties. That the
11 payment came under a "settlement" does not change the effect or
12 the intent. It is still the purchase of a witness's silence.
13 This issue was addressed in Fong v. Miller, 105 Cal.App.2d 411,
14 233 P.2d 606 (1951) wherein the court stated:

15
16 "Appellants bitterly complain that the court's
17 action leaves the Respondent unjustly
18 enriched. The complaint is a familiar one, it
19 is generally made by those who, deeming
20 themselves wronged by their companions in
21 illegal ventures, find themselves denied of
22 any right to enforce their unlawful
23 agreements. Their pleas have always been
24 unavailing. This rule is not generally
25 applied to secure justice between parties who
26 have made an illegal contract, but from regard
27 for a higher interest - that of the public,

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1 whose welfare demand that certain transactions
2 be discouraged." Id. at 414-415.

3
4 We assume the Church will further claim there is no
5 obstruction because individuals (at least those who do not avoid
6 valid process) can be deposed. However, Mr. CORYDON cannot get
7 the same assistance by deposition that he can by cooperation
8 especially when that person fears a lawsuit for \$50,000 liquidated
9 damages! Furthermore, depositions have certain rules and limited
10 time, as well as considerable expense. Some of the parties to the
11 settlement agreement individuals reside outside of California and
12 their knowledge is quite extensive. Depositions cannot substitute
13 for voluntary cooperation, such as appearance at trial, nor should
14 such economic burden be placed on Mr. Corydon just to interview
15 witnesses. Further, he has the right, when possible, to prepare
16 his defense by private interviews of prospective witnesses, not
17 just paid-for depositions that have his adversaries present.
18 Finally, the party who does not avoid valid process is subject to
19 the threat of a \$50,000 liquidated damage claim!

20
21 C. Because Of Its Unclean Hands, The Church
22 Is Not Entitled To The Protection That
23 Sealing The Release Would Afford Them.
24 The Inherent Powers Of The Court Permit
25 It To Order The Filing Without Such
26 Protection.

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1 The Church is sure to protest that if ordered to file the
2 Mutual Release and Settlement Agreement that it must be filed
3 under seal pursuant to Judge Breckenridge's order. Their argument
4 will be that the Agreement is confidential and that it is
5 important to protect privacy interests pending the determination
6 of their writ and/or appeal. However, as parties with unclean
7 hands they must be denied such protection.

8
9 In Stone v. Bach (1978) 80 Cal.App.3d 442, 145 Cal.Rptr. 599,
10 the court stated:

11
12 ". . . it would be a flagrant abuse of the
13 principles of equity and of the administration
14 of justice to consider the demands of a party
15 who becomes a voluntary actor before a court
16 and seeks its aid while he stands in contempt
17 of its legal orders and processes."

18
19 80 Cal.App.3d at 444.

20
21 Further, the Stone court specifically noted that it was
22 contemptuous to avoid process while seeking judicial
23 consideration. Id. at 601. Here the Church has compelled the
24 agreement of others to avoid process as the price of their peace.

25
26 The case of Hull v. Superior Court of Los Angeles (1960) 54
27 Cal.2d 139, 5 Cal.Rptr. 1, is also pertinent. In that case the
28 California Supreme Court stated, "A court should have the right to

1 deny its process and aid to one who stands in contempt or is in
2 contempt of its orders. One who has willfully refused to comply
3 with the mandate of a court cannot then compel that court to do
4 its bidding." Id. at 5.

5
6 Finally, an order to file the Mutual Release and Settlement
7 Agreement but not seal it would, under the circumstances herein,
8 be well the inherent powers of this court. C.C.P. § 128.

9
10 C.C.P. § 128 states that every court shall have the power to
11 control the conduct of persons connected with judicial proceedings
12 and every matter pertaining thereto. In Rosato v. Superior Court
13 of Fresno County, 124 Cal.Rptr. 427, 51 Cal.App.3d 206, the court
14 noted C.C.P. § 128 "neither created nor circumscribed the powers
15 thus defined", but is a statutory confirmation of the court's
16 power which has been explicated and amplified by court decision.
17 The courts have the power to insure the orderly administration of
18 justice.

19
20 As stated in People v. Smith, 91 Cal.Rptr. 786, 13 Cal.App.3d
21 897, the courts have inherent power to control judicial
22 proceedings and to see to it that all persons, including parties,
23 indulge in no act or conduct calculated to obstruct administration
24 of justice. See also Cooper v. Superior Court in and for Los
25 Angeles County, 10 Cal.Rptr. 842, 55 Cal.2d 291.

26
27 In Venice Canals Resident Homeowners v. Superior Court, 140
28 Cal.Rptr. 361, 72 Cal.App.3d 675, petitioners brought an action

1 under C.C.P. § 1084.5 to review granting of building permits. As
2 a condition of a stay order, the court ordered a bond to be
3 posted. The petitioners appealed asserting the code section did
4 not require bond or undertaking. The appellate court acknowledged
5 the same but stated the authority existed under the inherent power
6 of the trial court to exercise reasonable control over litigation
7 and the power to achieve justice, stating:

8
9 "The inherent power of all courts to control
10 and prevent abuses in the use of their
11 process. . . does not depend upon
12 constitutional or legislative grant but is
13 inherently necessary to the orderly and
14 efficient exercise of jurisdiction."

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16 72 Cal.App.3d at 680.

17
18 CONCLUSION

19
20 Based on the foregoing, BENT CORYDON urges this Court to find
21 that Plaintiff. Intervenor did not file an executed duplicate
22 original of the Mutual Release of All Claims and Settlement


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1 Agreement as ordered; that they be ordered to do so forthwith;
2 that notwithstanding the document include all attachments, and
3 that the documents thus filed shall not be sealed.
4

5 DATED: January 14, 1989

6 PAUL MORANTZ
7 P.O. Box 511
8 Pacific Palisades, CA

9 SAYRE, MORENO, PURCELL & BOUCHER

10 
11 _____
12 FEDERICO C. SAYRE
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15 *Bent Corydon*

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